

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BASIL T. SIMON,

Plaintiff,

v.

Case No. 04-72977

DEEPER LIFE CHRISTIAN CHURCH, INC.,
DEEPER LIFE CHRISTIAN MINISTRIES, and
BISHOP A.B. JEFFERSON,

Defendant.

ORDER DENYING MOTION SEEKING RELIEF FROM ORDER

Before the court is a Motion Seeking Relief from Order pursuant to Federal Rule of Civil Procedure 60(b)(6), initially filed on August 16, 2016 (Dkt. #128), withdrawn (Dkt. #130), then re-filed on January 17th and 18th of 2017 (Dkts. ##131, 132). The motion seeks relief from the court's order of March 1, 2016, granting Basil T. Simon's motion to substitute himself as Plaintiff in place of Eastown Inc., and the Dietrich Trust. (Dkt. #101). Though apparently filed by Interested Party Edgar Dietrich, the instant motion purports to seek relief on behalf of nominal Movants Jason Dietrich and Eric Dietrich, beneficiaries of terminated Plaintiff, The Dietrich Trust. The instant motion is signed by Edgar Dietrich, though the previous ones were signed by Eric Dietrich.

Federal Rule of Civil Procedure 60(b)(c) states that a "court may relieve a party or its legal representative from a final judgment, order or proceeding for . . . any other reason that justifies relief." Fed. R. Civ. P. 60(b)(c). Movants argue that, as they were never named parties in this proceeding, they were never served with notice of the

motion to substitute party and were therefore never able to respond. However, it is clear that Edgar Dietrich, the creator of the Dietrich Trust, was apprised of this motion as he filed two responsive briefings. (Dkts. ##72, 110). The instant motion does not advance any substantive arguments regarding the substitution of the Dietrich Trust beyond those already discussed in Edgar Dietrich's response briefs. Moreover, Movants do not identify any rule requiring service on a plaintiff trust's beneficiaries nor any rule requiring that beneficiaries be provided an opportunity to respond to a motion to substitute the trust as a party. As such, they have not provided any "reason that justifies relief" from the court's order granting substitution. Finally, Movants are not named parties, and they do not claim to be the "legal representative[s]" of the trust or any other named party. Therefore, the court may not relieve them from its order under the plain language of Federal Rule 60, which applies to "a party or its legal representative." Fed. R. Civ. P 60. For these reasons, the court will deny their motion seeking relief from order.

Accordingly, IT IS ORDERED that the Motion Seeking Relief from Order (Dkt. #128) is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 22, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 22, 2017, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(810-292-6522)